LUXEMBOURG

Enforcement (117 Kb)

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Luxembourg, Directives 93/13 (Unfair Contract Terms), 2008/122 (Timeshare), 98/6 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2009/22 (Injunctions), 2011/83 (Consumer Rights) and 90/314 (Package Travel) are implemented by the Consumer Code dated April 14, 2016; Directive 2006/114 (Misleading and Comparative Advertising) is implemented by the law of December 23, 2016 on misleading and comparative advertising (hereafter “the Law").

The Consumer Code and the Law are enforced by the “Ministry for consumer protection” pursuant to the adoption of the Grand-Duchy Regulation establishing the ministries (“Arrêté grand-ducal du 5 décembre 2018 portant constitution des Ministères”) according to Article L. 311-4, Consumer Code.

Other special competences are granted to the following authorities (Article L. 311-5 of the Consumer Code):

the Supervisory Commission for the Financial Sector (Commission de Surveillance du Secteur Financier, "CSSF") (http://www.cssf.lu/);

the Supervisory Authority for the Insurance Sector (Commissariat aux Assurances, "CAA") (http://www.commassu.lu/);

the Ministry of Health (www.ms.etat.lu);

the National Commission for Data Protection (Commission Nationale pour la Protection des Données, "CNPD") (https://cnpd.public.lu/); and

the Transport Community (Communauté des Transports or Verkéiersverbond).

Who can file administrative complaints? Can investigations be initiated ex officio?

The right to take legal action for the protection of the collective interests of consumers is recognised for any association which has as its purpose the protection of the collective interests of consumers.

The approval of associations shall be granted by decision of the Minister responsible for consumer protection, who shall inform the European Commission of its decision if the approved association so requests.

Approval is granted for a period of five years and is renewable.

Applications for approval and renewal are sent by registered letter with acknowledgment of receipt to the Minister responsible for consumer protection.

An investigation may also be initiated ex officio by:

Ministry for consumer protection;

the CSSF;

the CAA;

the Ministry of Health; and

the Transport Community.

The above associations and authorities, as well as any person, may bring an action before the competent court in order to put an end to or prohibit any unlawful act.

Do any specific procedural requirements apply to filing administrative complaints?

The complaint can be sent directly to the competent authority:

1) by letter: Ministère de la Protection des consommateurs

271, route d’Arlon

L-1150 Luxembourg

Adresse postale :

B.P. 119 L-2011 Luxembourg, or

2) by telephone: (+352) 247-73718

Do the administrative authorities have an obligation to investigate the complaint?

The administrative authorities are required to investigate any complaints they receive in a non-anonymous form.

Are there any specific requirements regarding the provision of evidence to the competent authorities?

The law does not provide for any specific requirement. Generally, a complaint should describe the issue as comprehensively as possible and should be supported by any relevant documents.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

Aside from a claim for damages under Article 1382 of the Civil Code, procedures for the issuance of a cease-and-desist order are provided by the Consumer Code (Article L. 320-1 to L. 320-7).

The proceedings take place before the judge presiding the Chamber of the District Court, sitting in commercial matters ("Magistrat présidant la Chambre du tribunal d'arrondissement siégeant en matière commerciale"), who renders a decision on the merits of the case.

The Public Prosecutor ("Procureur d’Etat") can file a criminal complaint.

Who can start a court action?

i) Any person,

ii) any professional organisation,
iii) any consumer association
iv) the Ministry of Consumer Protection,
v) the CSSF,
vi) the CAA, and
vii) the Ministry of Health, may file a request for the issuance of a cease-and-desist order depending on the type ofbreach involved (breach of obligations regarding price information
- Article L.320-1, Consumer Code, or unfair commercial practices
- Article L. 320-2 to 7, Consumer Code).

Can court actions be initiated by competitors?
Any affected competitor (who has suffered a prejudice as a result of the infringement) may file a claim under Article 1382 of the Civil Code.
Competitors with a direct and legitimate interest may initiate an action for the issuance of a cease-and-desist order in respect of unfair commercial practices (Article L. 320-2, Consumer Code).

Can the case be handled through an accelerated procedure?
The procedure for the issuance of a cease-and-desist order is similar to summary proceedings ("procédure de référé"). This means that the case can be decided in a short period of time and the time limit for appeal is fifteen days.

Are there any specific requirements regarding the provision of evidence to the court?
The law does not provide for any specific requirement regarding the provision of evidence to the court.
The general rules of evidence as laid down in the Civil Code and the New Civil Procedure Code apply.
In case of misleading or comparative advertising, the judge may require the advertiser to provide evidence of the accuracy of the information in the advertisement (Article L. 320-2, Consumer Code). If insufficient evidence is provided, the judge may consider the data as inaccurate.

Are there specific procedural reliefs for consumers or consumer associations?
Neither the Civil Code, nor the Consumer Code contain any provision in this respect.

III. SANCTIONS

What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?
Civil damages may be awarded by the civil court on the basis of article 1382 of the Civil Code. These damages are more of an indemnifying nature than a sanction.
The District Court (tribunal d'arrondissement) can also order fines of EUR 251 up to EUR 50,000 for any breach of the injunctions or prohibitions relating to the provisions implementing Directives 98/6/EC (Price Indication), 93/13/EEC (Unfair Contract Terms), 97/7/EC (Distance Contracts) and 2011/83/EU (Consumer Rights) and fines of EUR 251 up to EUR 120,000 as regards the Directive 2005/29/EC (Unfair Commercial Practices).
The judge can also order the publication of the judgement (Article L. 320-1 to L. 320-7, Consumer Code).
There is no correlation between the level of monetary fines and the trader's turnover and no distinction is made in the determination of the monetary fines depending on whether the trader concerned is a natural or a legal person.

What are the possible criminal sanctions for the infringement of the Directives' provisions?
The criminal sanctions for the infringement of the provisions implementing the Directives are (i) a fine of 251 EUR up to 120,000 EUR in respect of unfair commercial practices, and (ii) a fine of 251 EUR up to 50,000 EUR for the failure to comply with a cease-and-desist order.

What are the possible administrative sanctions for the infringement of the Directives' provisions?
The administrative authorities (as set out above) cannot impose fines. They may however carry out searches / seizures to fulfil their duties (Article L. 311-8, Consumer Code).

What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?
In the case that an infringement of the Consumer Code is confirmed by a judgement, the consumer will be able to show that his/her consent was erroneously obtained and thus apply for the avoidance of the contract.

Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?
Consumers can file a claim for damages before the courts, in accordance with the general rules on tort (Article 1382, Civil Code), even if they have not initiated the cease-and-desist order procedure.

Can the administrative authorities or the courts require the publication of their decisions?
The judge can order the publication of the judgement on the inside or outside of the establishment of the defendant or in a newspaper, at the expense of the latter, provided the decision is final (Article L. 320-1 to L. 320-7, Consumer Code).

IV. OTHER TYPES OF ENFORCEMENT

Are there any self- regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?
The Council of the Advertising Industry of Luxembourg ("Conseil de la Publicité du Luxembourg") and the Committee for Ethics in Advertising ("Commission pour l'Ethique en Publicité") were established in 2009. The role of the Council of the Advertising Industry of Luxembourg and the Committee for Ethics in Advertising is the promotion and the defence of advertising and its freedom as well as the implementation of a code of ethics. (See http://www.conseilpublicite.lu).

Are there any out-of-court dispute settlement bodies available that deal with aspects of the Directives (e.g. mediation, conciliation or arbitration schemes ombudsmen)?

1) A Consumer Ombudsman was set up under the authority of the Ministry of the Economy as a contact point for the out-of-court settlement of consumer disputes.
The Consumer Ombudsman (“Le Médiateur de la consommation”) is responsible for the following (Article 421-1, sq. of the Consumer Code):
informing consumers and professionals about the possibilities for out-of-court settlement of disputes between consumers and professionals;
receiving requests for out-of-court dispute settlement and, if necessary, transmitting it to any other qualified entity competent in the matter, or otherwise handling it itself;
intervening in any out-of-court dispute settlement for which no other qualified entity is competent.
The dispute must derive from a sale or service contract.
The services of the Consumer Ombudsman are free of charge.
The Consumer Ombudsman may request any documents or information relevant to the dispute be brought before it.
The Consumer Ombudsman may convene the parties to facilitate the search for an amicable solution, or propose a solution, hear the parties and third parties and, in general, collect all information required.
Contact information:
Email address: info@mediateurconsommation.lu
Website: http://www.mediateurconsommation.lu
Phone + 352 46 13 11
Fax +352 46 36 03

2) The CSSF is also competent to receive complaints where there is an alleged suspicion of breach of consumer protection and its implementing regulations. In the case of a cross-border dispute, the CSSF is entitled to cooperate with the entities in the other Member States authorised to deal with complaints by consumers in order to amicably settle the complaint in accordance with Article 24(1) of Directive 2008/48/EC.
The CSSF is registered on the list of ADR entities within the meaning of Article L. 431-1 of the Consumer Code and on the list of ADR entities established and published by the European Commission. The complaints that are sent to the CSSF are handled by its legal department: “Legal Department Consumer Protection/Financial Crime” of the CSSF. The out-of-court resolution of disputes takes place on a voluntary basis and is free of charge.
Contact information:
Email address: reclamation@cssf.lu
Website: http://www.cssf.lu/consommateur/reclamations/
Phone +352 26251 2574
Fax +352 26251 2601

3) The Insurance Ombudsman (“Médiateur en assurances”) has been implemented by the Association of Insurance and Reinsurance Companies (ACA) and the Luxembourg Union of Consumers (ULC) to find extrajudicial solutions in insurance litigation between Luxembourg-based insurance companies and consumers residing in Luxembourg or in another Member State of the European Union.
The proceedings before the Ombudsman are free.
Referral to the Ombudsman must be done in writing (letter or e-mail) in one of the official languages of Luxembourg (the English language being now also accepted).
The request for mediation with the supporting documents must be addressed by email: mediateur@aca.lu, or by post: ACA, 12 Street Erasme, L - 1468 Luxembourg, (Phone: 44 21 44 1) or by Fax (44-02-89).
Website : http://www.aca.lu/fr/mediateur-assurance

4) The mission of the “Commission Luxembourgeoise des Litiges de Voyage (CLLV)” is to find an out-of-court settlement to consumer complaints relating to national and cross-border disputes relating to package travel contracts governed by Articles L.225-1 and following of the Consumer Code, concluded by a consumer residing or not in Luxembourg and a professional established in Luxembourg as well as any other travel service contract concluded by a consumer residing or not in Luxembourg through a travel agency established in Luxembourg.
The CLLV may also be referred to when a professional not established in Luxembourg accepts its jurisdiction for disputes with consumers residing in Luxembourg.
Contact information :
Email address: cllv@pt.lu
Website: https://www.ulc.lu/fr/organes/detail.asp?T=1&D=descr&ID=5
Phone: +352 49 60 22 205
Fax: +352 49 49 57

Last update: 19/07/2022
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